976

SUPREME COURT OF THE UNITED STATES.

No. 129.

WESLEY WILLIAMS, GARNISHEE OF EDWARD F. MAHONE, PLAINTIFF IN ERROR,

v.

HILL, McLEAN & CO.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF ALABAMA.

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United States of America, Middle District of Alabama.

At a District Court of the United States, for the Middle District of Alabama, begun and held at Montgomery, on the fourth Monday of November, in the year of our Lord one thousand eight hundred and fifty-four.

Tuesday, November 28, 1854.

Present, the Hon. John Gayle, Judge of said Court.

Affidavit of Jack Thorington.

District Court of the United States, for the Middle District of Alabama.

Personally appeared, Jack Thorington, attorney for plaintiffs, a credible person, who being duly sworn, deposeth and saith, that Harry R. W. Hill, James D. McLean, William Knox, and Robert W. Estlin, at the Spring Term, A. D. 1852, in the District Court of the United States for the Middle District of Alabama, recovered a judgment against Edward F. Mahone, for the sum of eighteen hundred and eight 64-100 dollars, and the farther sum of seventy-one 76-100 dollars, their costs of suit; and that the said defendant hath not property within the knowledge of this affiant in his possession to satisfy said judgment; and that Wesley Williams is supposed by this affiant to be, and he has just reason to believe is, indebted to or hath effects of the said defendant in his possession or under his control; and that said affiant believes process of garnishment against said Wesley Williams, is necessary to obtain satisfaction of said judgment.

JACK THORINGTON.

Sworn to and subscribed before me, 12th day of February, A. D. 1853.

MATT GAYLE,
Clerk D. C. Mid. Dist. of Ala.

Garnishment.

District Court of the United States, for the Middle District of Alabama.

To the Marshal of said district—greeting: Whereas, Jack Thorington, attorney for plaintiffs, hath made affidavit as required by law, that Harry R. W. Hill, James D. McLean, William Knox, and Robert W. Estlin, at the Spring Term, A. D. 1852, of the District Court of the United States for the Middle District of Alabama, recovered a judgment against Edward F. Mahone, for the sum of eighteen hundred and eight 64-100 dollars, and the farther sum of seventy-one 76-100 dollars, their costs of suit; and

that the said defendant has not property within the knowledge of said affiant in his possession to satisfy said judgment; and that Wesley Williams is supposed by him to be, and he has just reason to believe is, indebted to or has effects of the said defendant in his possession or under his control; and that he, said affiant, believes process of garnishment against said Wesley Williams is necessary to obtain satisfaction of said judgment.

These are therefore to command you, that you summon the said Wesley Williams to be and appear at the next term of the District Court, to be holden for said Middle District, on the fourth Monday of May next, within the first four days of said term, then and there to answer on oath what he is indebted to said defendant, and what effects of said defendant he has in his hands or under his control, and had at the time of serving this garnishment, and what effects or debts of said defendant there are in the hands of any other and what person to his knowledge or belief; and have you then and there this writ, with your indorsement thereon.

[SEAL.] Witness, Matt Gayle, Clerk of the said District Court, at office, this 12th day of February, A. D. 1853.

MATT GAYLE,
Clerk.

Issued 12th day of February, A. D. 1853.

Marshal's Return on Garnishment.

Executed by leaving a copy with Wesley Williams, the 14th day of February, 1853.

C. BINGHAM,
U. S. M.
Per H. WILKINS,
D. M.

Judgment Nisi.

And at the Spring Term, May 26, 1853, a judgment was entered in the words and figures following, to wit:

"HARRY R. W. HILL,
JAMES D. MCLEAN,
WILLIAM KNOX, and
ROBERT W. ESTLIN, } 873.
v.
WESLEY WILLIAMS,
Garnishee and Debtor to
EDWARD F. MAHONE, Defendant.

This day came the plaintiffs by their attorneys, and said garnishee being called, came not, but made default; and it appearing to the Court that said plaintiffs, at the Spring Term, 1852, of this Court, recovered a judgment against Edward F. Mahone, for the sum of eighteen hundred and eight 64-100 dollars, besides costs; and that

said garnishee has been duly summoned to appear and answer what he is indebted to said Edward F. Mahone, defendant, and he having failed to file his answer: It is therefore considered by the Court that said plaintiffs recover of said garnishee the said sum of eighteen hundred and eight 64-100 dollars, unless he appear at the next term of this Court, and show cause why this judgment should not be made final and absolute, and scire facias" to issue accordingly."

And afterwards, to wit: on the 13th day of July, A. D. 1853, a scire facias was issued in the words and figures following, to wit:

Scire Facias.

"United States of America, District Court of the United States, for the Middle District of Alabama.

The President of the United States to the Marshal of said District, greeting: Whereas, at a District Court of the United States for the said Middle District of Alabama, begun and held on the fourth Monday of May, A. D. 1853, the following order was made, and the following judgment entered, to wit:

"HARRY R. W. HILL,
JAMES D. MCLEAN,
WILLIAM KNOX, and
ROBERT W. ESTLIN,
v.
WESLEY WILLIAMS,
Garnishee and Debtor to
EDWARD F. MAHONE, Defendant, &c. } 873.

This day came the plaintiffs by their attorney, and said garnishee being called, came not, but made default; and it appearing to the Court that said plaintiffs, at the Spring Term, 1852, of this Court, recovered a judgment against Edward F. Mahone, for the sum of eighteen hundred and eight 64-100 dollars, besides costs; and that said garnishee has been duly summoned to appear and answer what he is indebted to said Edward F. Mahone, defendant, and he having failed to file his answer: It is therefore considered by the Court, that said plaintiffs recover of said garnishee the said sum of eighteen hundred and eight 64-100 dollars, unless he appear at the next term of this court, and show cause why this judgment should not be made final and absolute, and scire facias to issue accordingly."

You are therefore hereby commanded, without delay, to make known the premises aforesaid to the said Wesley Williams, and summon him to be and appear at the next term of this Court, to be holden on the fourth Monday of November next, at the place of holding the same at Montgomery, then and there to show cause, if any he has or can, why the judgment aforesaid against him shall not be made final and absolute, and execution awarded thereon.

Herein fail not, and have you then and there this writ, with your indorsement thereon.

Witness the Hon. John Gayle, Judge of said Court, [L. S.] this fourth Monday of May, in the year of our Lord, one thousand eight hundred and fifty-three.

Issued the 13th day of July, A. D. 1853.

Attest, P. H. S. GAYLE,
Clerk D. C. Mid. Dist. Ala.

Marshal's Return.

"Received same day issued. Executed on defendant 12th Nov. 1853.

C. M. GODBOLD,
U. S. Marshal.
By T. J. WILKINS ESPE,
Deputy Marshal."

Order and Continuance.

And on the 3d day of December, A.D. 1853, afterwards, to wit, the following entry was made, viz.:

"HILL, McLEAN & Co.
v.
WESLEY WILLIAMS. } 818, 873. Garnishment.

This day came the parties by their attorneys, and the death of Harry R. W. Hill, one of the plaintiffs, being suggested, it was, on motion, ordered by the Court, that the cause be carried on in the name of the surviving copartners. And the garnishee, Wesley Williams, appearing in open Court to answer the oral examination, was waived, on condition that plaintiff should file interrogatories in writing, and that the answer of said garnishee should be in writing; and the said interrogatories and answer being read in open Court, the same is hereby ordered to be filed. And the answer of garnishee being duly contested, by affidavit filed of William Knox, one of the plaintiffs, who thereby on oath saith, that he believes the answer to be untrue, it is ordered by the Court that an issue be made up to contest said answer. Whereupon comes the plaintiffs by their attorneys, Hilliard and Thorington, and the said garnishee by his attorneys, Belser and Rice, and the said plaintiffs by their said attorneys present in writing specific allegations in what respect said answer is untrue, and they are waived; and the said garnishee by said attorneys joins issue with the said plaintiffs, and avers that the said answer is true in every respect, and consents that upon the issue joined, the plaintiffs may contest said answer in every particular; and the cause coming on to be heard, the same was continued on affidavit of defendant."

Plaintiffs' Interrogatories to Garnishee.

HILL, MCLEAN & Co.
v.
EDWARD F. MAHONE, Defendant,
WESLEY WILLIAMS, Garnishee.

Interrogatories propounded to the said Garnishee.
U. S. District Court, &c. &c.

First Interrogatory. Did the defendant, Mahone, at any time convey to you certain slaves and real estate by certain mortgages? If yea, please describe the same particularly; the real estate, its character and value; the slaves, their names, sex, age, and value?

Interrogatory Second. Did you at any time sell said slaves and real estate at auction at Auburn? If yea, please state what the real estate sold for, and what each slave sold for, and who were the purchasers of each, and what day the sale took place, and who acted as auctioneer, and by whose request he acted?

Interrogatory Third. Did not George sell at said sale for nine hundred dollars; Philip, for nine hundred and ninety-one dollars; Ben, for seven hundred and thirty-one dollars; Louisa, for eight hundred and sixty-one dollars; Martha, for eight hundred and sixty dollars; Chaney, Charles, and Alfred, for seven hundred dollars; Amy, for four hundred and seventy-five dollars; Julia, for six hundred and fifty dollars; Eliza, Mary, Francis, and Rebecca, for thirteen hundred dollars; Adeline, for five hundred dollars, and the dwelling-house and lot of defendant, namely, his residence, sell for twenty-one hundred dollars? Did you not also at same sale sell ten or fifteen or other number of acres of land of said defendant, adjoining or near his said residence, for some five or six hundred dollars? State the same particularly. And was not all of the said real estate and slaves sold by you as the property of said defendant, Mahone, by virtue of certain mortgages you then held? What was the amount of the indebtedness of said Mahone to you on the day of sale of said property secured by said mortgages?

Interrogatory Fourth. Did not said slaves, on said day of sale, sell in the aggregate for seven thousand nine hundred and sixty-nine dollars, and did not the aggregate indebtedness of said Mahone, under said mortgages, on the day of sale, amount to eight thousand two hundred dollars and thirty-five cents, and did you not after the sale of said slaves make a calculation, and ascertain the balance still due you under the mortgages by Mahone, was on said day two hundred and thirty-seven 35-100 dollars, and did you not at that time inform Jack Thorington, one of the plaintiffs' attorneys, and also Hardy Wilkins, Deputy Marshal, that two hundred and thirty-seven 35-100 dollars was the amount then remaining unpaid after the sale of the slaves mentioned in 3d interrogatory?

Interrogatory Fifth. Did not the said Thorington then request you to suspend the sale, and permit the U. S. Marshal to sell said real

estate, viz., the residence of said Mahone, defendant, in Auburn, and the other tract of land, to satisfy the execution then in his hands in favor of said plaintiff against said defendant, Mahone, subject to your claim as mortgagee for the said balance, and did you not refuse to comply with said request?

Interrogatory Sixth. Did you shortly thereafter, on the same day of sale, sell said residence of Mahone, the defendant, under said mortgages, and by the same auctioneer, for the sum of twenty-one hundred dollars?

Interrogatory Seventh. Do you not at this time own the slaves mentioned in the 3d interrogatory? If you do not, state the exceptions, the names of those you do not own?

Interrogatory Eighth. In the indebtedness secured by said mortgages, was there any usury, or usurious interest included? If yea, please state the amount, and the rates of usury; state the consideration of said indebtedness fully and particularly?

Interrogatory Ninth. Did not Hardy Wilkins, U. S. Deputy Marshal, some time previous to said sale, have in his hands an execution in favor of said Hill, McLean & Co., against said Edward F. Mahone, and did he not levy the same some time previous to said mortgage sale on Eliza, Mary, Frances, Julia, Jordan, and Martha, and did you not claim said negroes, and give the said Deputy Marshal a claim bond for said slaves, and did you not afterwards sell the said slaves at the said mortgage sale. Please state what each of said slaves sold for. Aand had not the said Deputy Marshal previous to said mortgage sale also levied the same execution on the said residence of said defendant, Mahone, and the adjoining tract of land near said residence, and what did said real estate and premises sell for?

Interrogatory Tenth. Do you admit there was any fraud in conducting said mortgage sales, or was not the same bona fide and honest? Were the sales fictitious or real? Did not a great many others bid on all the property besides the purchasers? Did not Jack Thorington bid on all of said slaves that were sold, and did not the said slaves bring a fair price? Did you not give your personal attention to said sale, and call up said slaves in the order in which they were sold, and did you not control and superintend the whole sale? Did the sale take place on a Saturday? Was Mahone present? or was he not absent, and returned on Sunday the next day; and were you not served by the process very early on the next Monday morning; and had you any interview with said Mahone on said Monday morning before the service of said garnishment? What is the value of the boy, Jordan?

HILLIARD & THORINGTON,
Attorney for Plaintiffs.

Filed, Fall Term, 1853.

P. H. S. GAYLE,
Clerk.

Answer of Garnishee.

HILL, MCLEAN & Co.
v.
EDWARD F. MAHONE, Defendant,
WESLEY WILLIAMS, Garnishee.

Pending in the District Court of the United States for the Middle District of Alabama, at Montgomery.

Wesley Williams, garnishee, for answer to said garnishment, and to the questions propounded to him, so far as he is advised he is bound by law to answer the same, says, that the said Edward F. Mahone being indebted to him in the sum of six thousand two hundred and eighty-one 25-100 dollars, on the 9th January, 1851, for cotton sold to him by garnishee, executed on said 9th January, 1851, to secure said indebtedness, the deed of trust which is herewith shown, with leave to withdraw said deed on leaving a copy, which deed was duly recorded, and in due time, and was accepted by garnishee in good faith, as a security for said indebtedness.

On the 5th April, 1851, the said Mahone being otherwise and further indebted to garnishee in the sum of twelve hundred dollars, in consideration of money lent to him by garnishee, executed in Macon County, Alabama (the county of Mahone's residence), another deed of trust or mortgage, conveying to garnishee two slaves, named Martha and Yellow Adeline, and some ten or twelve acres of land, adjoining the house and lot mentioned in the deed first above mentioned, to secure said indebtedness of twelve hundred dollars, and authorizing garnishee to sell said property, therein conveyed and mentioned, for the satisfaction of said indebtedness of twelve hundred dollars, at any time after the 1st January, 1852, on giving ten days' notice, if said Mahone failed, by said 1st January, 1852, to pay off said indebtedness of twelve hundred dollars, and the interest thereon, and the expenses of carrying said deed into effect, and making sale under it; said last-named deed was also duly recorded, in the office of the Probate Judge of said County of Macon, within less than thirty days after its execution, and was also duly recorded in Barbour County, Alabama; but garnishee is unable now to produce said deed, because it was sent off lately with interrogatories and commission to procure the testimony of Robert A. Crawford, in relation to its execution and consideration, in a case now pending in said District Court, between the same Hill, McLean and Co., plaintiffs in execution, and this garnishee is claimant, in which case the said Hill, McLean and Co., having caused an execution, which was issued under the same judgment under which they are now here proceeding against this garnishee, to be levied on slaves, are now seeking to condemn, and subject said slaves to sale under said judgment, execution and levy, all of which slaves are embraced in said two deeds hereinabove mentioned. Garnishee has given his best recollection of the contents of the deed of April 5, 1851, but for greater

certainty he refers to said deed itself, which, or a copy of which, he will produce, if required, as soon as he can obtain either. On the 12th February, 1853 (which was Saturday) the said Henry L. Mc Gregor having died in the fall of 1852, this garnishee, after having given the proper notices, made a sale, under said first above-named deed, of the following slaves therein named, at the following prices. George, $900; Philip, $991; Ben, $731; Louisa, $861; Chaney and her two children, Charles and Alfred, $700; Amy, $475; Julia, $650; Eliza, and her three children, Mary, Francis, and Rebecca, $1300; all of said prices together amounting in the aggregate to $6608. The amount due garnishee, on the indebtedness secured by said first above-named deed, on the day of said sale, was $6842 37. The expense of bringing said slaves last above-mentioned to sale, and making the sale, was at least forty dollars. It was in fact more. But counting the expenses at $40, and deducting that sum from said sum of $6608, left $6568 as a credit or partial payment, on said indebtedness of $6842 37, but did not satisfy said indebtedness, but left unpaid and unsatisfied of said indebtedness of $6842 37, the sum of $274 37. And upon ascertaining that the said indebtedness, secured by said first-named deed, was not satisfied by the said sale of said slaves as above set forth, garnishee at the same time and place proceeded to sell under that deed the house and lot therein mentioned, and it was bought by Francis W. Dillard, at $2100. After said slaves were sold, but before said house and lot was sold, Jack Thorington, attorney for plaintiff, requested garnishee not to sell the house and lot under said first above-named deed, and garnishee then and there told him, there was a balance which was due on said indebtedness therein secured, and told him if he would pay such balance garnishee would not sell, but he made a calculation as to the balance, and refused to pay such balance, and garnishee then proceeded to sell the house and lot as aforesaid. Garnishee sold nothing else under said first above-named deed than is hereinabove set forth.

Under the deed of April 5th, 1851, garnishee having given proper notice, on said 12th February, 1853, sold Martha at $860, and Yellow Adeline at $500 (the slaves therein mentioned), to pay off the indebtedness therein secured, and the expenses of executing said deed and bringing said slaves to sale, which expenses were about $500. The whole of the indebtedness secured by said deed, of April 5th, 1851, and interest thereon, remaining due and unpaid on said 12th February, 1853, was $1307 20. Garnishee did not sell, and has not sold, any other property contained in either of said deeds than is hereinabove set forth.

Between 5th April, 1851, and 5th May, 1852, the said Mahone became otherwise and further indebted to garnishee, in respect to other and different transactions, in a sum which with interest thereon, counted up to 12th February, 1853, amounted on that day to the sum

of $1993 22, and which remained unsatisfied, and was on that day unsatisfied, and as far back as 5th May, 1852, the said Mahone had instructed and ordered garnishee that if, on a sale under said deeds of property therein mentioned, there should be or remain in garnishee's hands any surplus arising from the sale of property conveyed by said deed, after satisfying the indebtedness secured by said deeds, and all other expenses of bringing the property to sale, and making the sale, garnishee should apply such surplus to the payment and satisfaction, pro tanto, of said indebtedness of said Mahone to garnishee, which is above mentioned and described as the indebtedness which was contracted between 5th April, 1851, and 5th May, 1852; and this order and direction was never withdrawn or countermanded by said Mahone, but was repeated and continued by him frequently between 5th May, 1852, and 12th February, 1853. And under this order and direction of Mahone garnishee did claim and still claims that he is right in applying any such surplus to the payment, pro tanto, of the said indebtedness, which arose between 5th April, 1851, and 5th May, 1852, and in retaining any such surplus for that purpose; and such surplus does not amount to as much as the said last-mentioned indebtedness.

This garnishee has been served with several writs of garnishment, issued out of and returnable to the Circuit Court of Macon County, Alabama, at the instance of several judgment creditors of said Mahone, to answer whether he is indebted to said Mahone, or has any of his effects, &c., and said several garnishment suits are still pending against this garnishee in said Circuit Court.

The said Mahone, without collusion with this garnishee, and against the will of garnishee, has, within the last forty days, filed in the Chancery Court of said County of Macon, his original bill against this garnishee, which is still pending, whereby and wherein, among other things, he is seeking a decree from said Chancery Court, to vacate and set aside said sale made under said deeds on the 12th February, 1853, a copy of which bill is herewith shown to the Court. Garnishee does not admit any indebtedness to said Mahone, but on the contrary denies the same, and says, that said Mahone is indebted to this garnishee, as clearly appears from the matter hereinabove stated.

WESLEY WILLIAMS,

Sworn to and subscribed, December 1st, 1853.

P. H. S. GAYLE,
Clerk.

Affidavit of Wm. Knox, Plaintiff.

HILL, MCLEAN & Co.,
v.
EDWARD F. MAHONE, Defendant;
WESLEY WILLIAMS, Garnishee.

U. S. District Court. Fall Term, 1853.

In open Court comes William Knox, one of the plaintiffs, who, on oath, saith, that he believes the answer of the said garnishee to be untrue.

WILLIAM KNOX.

Sworn to and subscribed before me this second day of December, 1853. P. C. S. GAYLE, Clerk.

Replication.

The garnishee, Wesley Williams, in reply, avers that the answer is true in every respect.

BELSER & RICE, For Garnishee.

Filed 2d December, 1853.

P. C. S. GAYLE, Clerk.

Judgment.

HARRY R. W. HILL, JAMES D. MCLEAN, WILLIAM KNOX, & ROBERT W. ESTLIN,
v.
WESLEY WILLIAMS, Garnishee;
EDWARD F. MAHONE, Defendant.

Judgment. Fall Term, Dec. 6, 1854.

This day came the said plaintiffs and the said Wesley Williams, by their attorneys; and the said Wesley Williams having filed his answer as a garnishee, denying that at the time of the service of said garnishment, at the suit of said plaintiffs, against the said Wesley Williams, that he was not indebted to the said Edward F. Mahone; and the said plaintiffs having made affidavit that they believe the said answer of the said Wesley Williams, as such garnishee, is untrue; and thereupon the said plaintiffs aver, that at the time of the service of said garnishment, that the said Wesley Williams was indebted to the said Edward F. Mahone; and the said Wesley Williams joins issue with the said plaintiffs, and denies that the said Wesley Williams was indebted at the time of the service of said garnishment to the said Edward F. Mahone; and thereupon came a jury of good and lawful men, to wit, E. H. Harris and eleven others, who, being duly sworn to well and truly try the issue joined between the parties, on

their oaths do say, they find the issue joined between the said parties in favor of the said plaintiffs, and find that at the time of the service of the said garnishment, that the said Wesley Williams was indebted to the said Edward F. Mahone in the sum of two thousand two hundred and twenty-four dollars and fifty-one cents; and it appearing to the Court that the said plaintiffs, at the Spring Term, 1852, of this Court, recovered a judgment against the said Edward F. Mahone, for the sum of eighteen hundred and eight dollars and sixty-four cents, and that said judgment remains in this Court in full force and effect, not reversed, satisfied, or otherwise vacated: It is therefore considered by the Court, that the said sum of two thousand two hundred and twenty-four dollars and fifty-one cents, so found to be due by the said Wesley Williams to the said Edward F. Mahone, at the time of the service of the said writ of garnishment—condemned, in the hands of the said Wesley Williams, to the payment and satisfaction of the said judgment so recovered by the said plaintiffs against the said Edward F. Mahone; and that the said plaintiffs recover of the said Wesley Williams the said sum of two thousand two hundred and twenty-four dollars and fifty-one cents, and also costs, for which execution may issue.

Motion for New Trial refused.

HILL, MCLEAN & CO.,
v.
WESLEY WILLIAMS, Garnishee of E. F. MAHONE. } Garnishment.

December 6, 1854.

This day came the garnishee, Wesley Williams, by his attorney, and moves the Court for a new trial in this cause; and upon argument, it is ordered by the Court that said motion be refused.

Bill of Exceptions.

HARRY R. W. HILL, JAMES D. MCLEAN,
WILLIAM KNOX, & ROBERT W. ESTLIN,
v.
EDWARD F. MAHONE, Defendant in judgment,
WESLEY WILLIAMS, Garnishee.

District Court of the United States, for the Middle District of Alabama. Winter or Fall Term, 1854.

This proceeding was commenced by a writ of garnishment, sued out of this Court by the plaintiffs, on the 12th day of February, 1853, against said Wesley Williams, as garnishee, which writ, as it appears on file, is hereby made part of the record and of this bill of exceptions, as much so, as it were herein copied at length. Said garnishment was served on said Wesley Williams early in the

morning of the 14th day of February, 1853. The garnishee duly filed in this Court his answer, in writing, under oath, to the garnishment, and to the special interrogatories propounded to him, after the service of the garnishment by the plaintiffs; and at the Fall or Winter Term, 1853, the said Knox filed his affidavit in writing, that he believed said answer of the garnishee to be untrue; and thereupon an issue was made up in writing, whether said answer was true or not, as shown by the said affidavit and the replication of garnishee thereto, which replication asserts that said answer is true. The said answer, affidavit, and replication, as they respectively appear on file above referred to, are hereby made part of the record, and of this bill of exceptions, as if they were herein fully copied. The issue as to the truth of the answer being made up as aforesaid, the said issue came on for trial by Jury at the present Term of this Court. On the trial of said issue, the plaintiffs read to the Jury, as pleading the said garnishment, the said answer, the said affidavit, and the said replication. The plaintiffs then introduced a witness, who testified to the Jury that, on the 12th day of February, 1853, the said Wesley Williams sold at public auction, for cash, in the town of Auburn, in Macon County, Alabama, under two mortgages executed to him by said Edward F. Mahone, hereinafter copied, the several slaves mentioned in said mortgages; and that the aggregate sum for which all of said slaves sold at that sale, was seven thousand nine hundred and sixty-eight dollars; that immediately after the last one of said slaves was sold at said sale, the said Williams had an interview and conversation with one of the attorneys of plaintiffs, who was present at said sale, and that in that interview and conversation, the said Williams and said attorney of plaintiffs made a calculation to ascertain whether the said seven thousand nine hundred and sixty-eight dollars (the proceeds of the sales of the said slaves), would satisfy said two mortgages, and if not, what amount of the debt and interest secured by said mortgages would remain unsatisfied and unpaid, after deducting from the debt and interest secured by the mortgages, the said sum of $7968; that it was ascertained in said interview, that after allowing said sum of $7968, as a credit on said mortgages, there was then still left unpaid and unsatisfied of the debt and interest secured by said mortgages, the sum of two hundred and thirty-five dollars; that thereupon the said Williams told said attorney of plaintiffs, that if he, said attorney of plaintiffs, would pay him said balance of two hundred and thirty-five dollars, he would not sell the house and lot embraced in the elder of said mortgages, to wit, the mortgage executed in January, 1851; that said attorney of plaintiffs refused to pay the said balance ascertained as aforesaid to remain due and unsatisfied on the debt secured by said mortgages. And thereupon, in a short time afterwards, and on the same day, and at the same place, the said Williams sold, at public auction, the said house and lot, embraced in said elder mortgage, to F. W. Dillard, who was the highest

their oaths do say, they find the issue joined between the said parties in favor of the said plaintiffs, and find that at the time of the service of the said garnishment, that the said Wesley Williams was indebted to the said Edward F. Mahone in the sum of two thousand two hundred and twenty-four dollars and fifty-one cents; and it appearing to the Court that the said plaintiffs, at the Spring Term, 1852, of this Court, recovered a judgment against the said Edward F. Mahone, for the sum of eighteen hundred and eight dollars and sixty-four cents, and that said judgment remains in this Court in full force and effect, not reversed, satisfied, or otherwise vacated: It is therefore considered by the Court, that the said sum of two thousand two hundred and twenty-four dollars and fifty-one cents, so found to be due by the said Wesley Williams to the said Edward F. Mahone, at the time of the service of the said writ of garnishment—condemned, in the hands of the said Wesley Williams, to the payment and satisfaction of the said judgment so recovered by the said plaintiffs against the said Edward F. Mahone; and that the said plaintiffs recover of the said Wesley Williams the said sum of two thousand two hundred and twenty-four dollars and fifty-one cents, and also costs, for which execution may issue.

Motion for New Trial refused.

HILL, MCLEAN & CO.,
v.
WESLEY WILLIAMS, Garnishee of E. F. MAHONE. } Garnishment.

December 6, 1854.

This day came the garnishee, Wesley Williams, by his attorney, and moves the Court for a new trial in this cause; and upon argument, it is ordered by the Court that said motion be refused.

Bill of Exceptions.

HARRY R. W. HILL, JAMES D. MCLEAN,
WILLIAM KNOX, & ROBERT W. ESTLIN,
v.
EDWARD F. MAHONE, Defendant in judgment,
WESLEY WILLIAMS, Garnishee.

District Court of the United States, for the Middle District of Alabama. Winter or Fall Term, 1854.

This proceeding was commenced by a writ of garnishment, sued out of this Court by the plaintiffs, on the 12th day of February, 1853, against said Wesley Williams, as garnishee, which writ, as it appears on file, is hereby made part of the record and of this bill of exceptions, as much so, as it were herein copied at length. Said garnishment was served on said Wesley Williams early in the

morning of the 14th day of February, 1853. The garnishee duly filed in this Court his answer, in writing, under oath, to the garnishment, and to the special interrogatories propounded to him, after the service of the garnishment by the plaintiffs; and at the Fall or Winter Term, 1853, the said Knox filed his affidavit in writing, that he believed said answer of the garnishee to be untrue; and thereupon an issue was made up in writing, whether said answer was true or not, as shown by the said affidavit and the replication of garnishee thereto, which replication asserts that said answer is true. The said answer, affidavit, and replication, as they respectively appear on file above referred to, are hereby made part of the record, and of this bill of exceptions, as if they were herein fully copied. The issue as to the truth of the answer being made up as aforesaid, the said issue came on for trial by Jury at the present Term of this Court. On the trial of said issue, the plaintiffs read to the Jury, as pleading the said garnishment, the said answer, the said affidavit, and the said replication. The plaintiffs then introduced a witness, who testified to the Jury that, on the 12th day of February, 1853, the said Wesley Williams sold at public auction, for cash, in the town of Auburn, in Macon County, Alabama, under two mortgages executed to him by said Edward F. Mahone, hereinafter copied, the several slaves mentioned in said mortgages; and that the aggregate sum for which all of said slaves sold at that sale, was seven thousand nine hundred and sixty-eight dollars; that immediately after the last one of said slaves was sold at said sale, the said Williams had an interview and conversation with one of the attorneys of plaintiffs, who was present at said sale, and that in that interview and conversation, the said Williams and said attorney of plaintiffs made a calculation to ascertain whether the said seven thousand nine hundred and sixty-eight dollars (the proceeds of the sales of the said slaves), would satisfy said two mortgages, and if not, what amount of the debt and interest secured by said mortgages would remain unsatisfied and unpaid, after deducting from the debt and interest secured by the mortgages, the said sum of $7968; that it was ascertained in said interview, that after allowing said sum of $7968, as a credit on said mortgages, there was then still left unpaid and unsatisfied of the debt and interest secured by said mortgages, the sum of two hundred and thirty-five dollars; that thereupon the said Williams told said attorney of plaintiffs, that if he, said attorney of plaintiffs, would pay him said balance of two hundred and thirty-five dollars, he would not sell the house and lot embraced in the elder of said mortgages, to wit, the mortgage executed in January, 1851; that said attorney of plaintiffs refused to pay the said balance ascertained as aforesaid to remain due and unsatisfied on the debt secured by said mortgages. And thereupon, in a short time afterwards, and on the same day, and at the same place, the said Williams sold, at public auction, the said house and lot, embraced in said elder mortgage, to F. W. Dillard, who was the highest

bidder therefor, at the sum of twenty-one hundred dollars; that the reasonable expenses of making said sale, under said mortgages, was at least fifty dollars; that the said garnishment was sued out after all of said sales had been made by said Williams, under said mortgages, but late in the evening of the same day. The said Wesley Williams then proved the execution of said two mortgages by said Mahone to him, their consideration and *bona fides*, and then read them in evidence. The said Williams read in evidence the depositions of Benjamin Herrin and Robert A. Crawford, as follows:

Interrogatories to Benjamin Herrin.

In the District Court of the United States at Montgomery, Alabama.

HILL, MCCLEAN & CO., }
v.
WESLEY WILLIAMS, Claimant. }

Same Plaintiffs }
v.
WESLEY WILLIAMS, Garnishee. }

Interrogatories to be propounded to Benjamin Herrin, a witness, in behalf of said Wesley Williams, which, with the answers thereto, will be read in evidence on the trial of the two above-entitled cases.

Interrogatory First. Are you acquainted with the parties to this suit, and with Edward F. Mahone?

Interrogatory Second. Look upon the mortgage or deed of trust hereto attached, marked Exhibit A, and state all you know about it. Tell whether it was signed, sealed, and executed, on the day it bears date, and in what county and state, and what was the consideration thereof; whether it was for cotton sold by said Williams to said Mahone, or other thing; and whether the warehouse receipts for the cotton were delivered to the said Mahone, the said Exhibit A was executed, and where the cotton itself was at the time; and tell all that occurred and was said at the time of the execution of said Exhibit A; and whether any note was then executed by said Mahone to said Williams. Tell whether you are a subscribing witness to said Exhibit A, and whether there is another subscribing witness, and whether the subscribing witnesses signed their names in the presence of each other, and in the presence of said Mahone, at the time said Exhibit A was executed. Tell all you know which will benefit the said Williams.

BELSER, RICE & BARRETT,
Attorneys for said Williams.

As attorneys for the said plaintiff, we waive affidavit, and consent that commission issue forthwith to take the testimony of the above-named witness, according to the law of Alabama in relation to depositions, and that the testimony be taken and returned according to said law; and that, so far as relevant and legal, it may be used in both of the above-entitled causes.

HILLIARD & THORINGTON,

15th June, 1854. Plaintiffs' Attorneys.

Plaintiffs object to the second interrogatory, because it is leading, and also to the conversations inquired of, or what was said, unless plaintiffs, or some one of them, was present; reserving these objections, they annex the following cross-interrogatories.

HILLIARD & THORINGTON,
Plaintiffs' Attorneys.

Cross-interrogatories to Benjamin Herrin.

Cross-interrogatory First. If, in answer to the 2d direct interrogatory, you say anything about cotton forming the consideration of said note or mortgage, then please say what was the price said cotton was purchased at, and what was the current price of cotton of that quality at the time and place said trade was made? Was not the cotton purchased by said Mahone at two or three cents per pound above its value; and was it not an usurious trade, or mere subterfuge, to avoid the law of usury? Upon what time or credit was the cotton sold, and what was the fair cash value of said cotton? Please state what amount of usury was included in said note? If there was any other consideration for said note beside cotton, please state what it was? Please state any usury, direct or indirectly, connected with the indebtedness or transaction inquired of, and particularly with regard to the cotton? Have you done so?

Interrogatory Second. What was your avocation or business at the time of said transaction? What is it now? When and where did the transaction take place? How many bales of cotton were sold? What was the quality of said cotton? Did you not know at the time, or have you not since ascertained, that the cotton, or a large portion of it, was of a very inferior quality? In what warehouse was the cotton stored? Was not Williams at that time in the habit of loaning Mahone money at high rates of usury, viz., two or three (or more) per cent. a month, and was not some one or more of said transactions included in said note or mortgage? State any fact or circumstance within your knowledge going to show usury in said indebtedness?

Interrogatory Third. Do you know of your own knowledge what you have answered to the direct interrogatories? If not, please state what you have answered from information gained from others?

Interrogatory Fourth. Have you any interest in, or do you gain or lose anything by the result of these suits?

Interrogatory Fifth. Please state any fact or circumstance within your knowledge, going to show the inducement, on the part of Williams, to make said trade with Mahone, the excess of price over market value, and every fact or circumstance going to show its usurious character, as if particularly interrogated thereto? Have you done so?

HILLIARD & THORINGTON,
Attorneys for Plaintiffs.

Commission.

United States of America; District Court of the United States for the Middle District of Alabama.

To Joseph A. Clark and John B. Davis.

Know ye, that we, having full faith in your prudence and competency, have appointed you Commissioners, and by these presents do authorize you, or any one or more of you, at such time and place as you may appoint, to call before you and examine Benjamin Herrin, as a witness in behalf of the claimant and garnishee, in a cause pending in the District Court of the United States, for the Middle District of Alabama, wherein Hill, McLean & Co. are plaintiffs, and Wesley Williams, claimant, on oath, to be by you administered, upon interrogatories and cross-interrogatories, annexed to this commission, to take and certify the deposition of the witness, and return the same to our said Court, to be holden on the fourth Monday of November next, under your hands and seals.

Witness, the Hon. John Gayle, Judge of said Court,
[L. S.] fourth Monday of May, A. D. 1854. Issued, June 22d, A. D. 1854.

Attest:

P. H. S. GAYLE,
Clerk D. C. Middle District of Alabama.

Answer of Herrin.

In the District Court of the United States, at Montgomery, Alabama.

HILL, McLEAN & Co.
v.
WESLEY WILLIAMS, Claimant.

Same Plaintiffs
v.
WESLEY WILLIAMS, Garnishee.

By virtue of a commission issued from the United States District Court for the Middle District of Alabama, to me directed, I have caused the within-named witness, to wit, Benjamin Herring, to come before me, at Social Circle, in the County of Walton, and State of

Georgia, who, after being duly sworn true answers to make both to the direct and cross-interrogatories to said commission attached, deposes and answers as follows.

To First Interrogatory. He saith the mortgage marked Exhibit A, attached to the Interrogatories, was signed, sealed, and delivered on the day it bears date, in the town of Auburn, Macon County, State of Alabama, the consideration for which said mortgage was executed was cotton sold by the claimant to Mahone, after the execution of the mortgage and note of Mahone. Witness saw claimant give Mahone some papers, but does not know what they were. Heard the claimant and Mahone say the cotton was in Montgomery, amounting to between eighty and ninety bales; as stated above, there was a note executed by said Mahone to said Williams, at the time of the execution of said mortgage. Witness says he is a subscribing witness to the mortgage attached to the interrogatories. There is another witness to said mortgage. Witnesses signed their names to the said mortgage in the presence of each other, and in the presence of E. F. Mahone, at the time said mortgage was executed.

BENJAMIN HERRING.

Answer to Cross-Interrogatory. First. Witness don't know what the cotton was purchased at, nor the quality of said cotton. Knows there was a crop lot sold about that time for thirteen cents. Does not know that there was any usury in the contract. The cotton was sold upon twelve months' credit. Witness knows of no other consideration but cotton for said note. Witness knows of no usury direct or indirectly connected with the transaction.

Interrogatory Second. Witness's avocation at that time and now is that of harness-maker. The transaction took place in the Town of Auburn, Macon County, Alabama, in the first part of January, 1851. Witness heard claimant and Mahone say there was between eighty and ninety bales sold. Did not know at the time, nor have not heard since, that the cotton was of an inferior quality. Does not know in what warehouse the cotton was stored. Does not know that Williams loaned Mahone any money at usury, and knows of no fact that will go to show that he did.

Interrogatory Third. Witness says that he stated, in his answer to the direct interrogatories, what he knows of his own knowledge, and from information gained from Williams and Mahone, at the time of the execution of said mortgage.

Interrogatory Fourth. Witness has nothing to gain or lose by the result of these suits.

Interrogatory Fifth. Witness does not know what inducement Williams had in making the trade. Does not know that there was an excess of price over the market value. Knows of no fact that will go to show usury in the transaction.

BENJAMIN HERRING.

The State of Georgia: Walton County.

I, Josiah A. Clark, Commissioner aforesaid, hereby certify, that the foregoing answers were taken, reduced to writing, sworn to, and subscribed before me, on the 20th day of November, A. D. 1854, and that I have personal knowledge of said witness, Benjamin Herring.

Witness my hand and seal, day and date above written.

J. A. CLARK, [SEAL.]
Commissioner.

Interrogatories to Robert A. Crawford.

Now pending in the United States District Court, at Montgomery, in the State of Alabama.

HILL, MCLEAN & Co.
v.
EDWARD F. MAHONE, Defendant in Execution,
And WESLEY WILLIAMS, Claimant.

Interrogatories to be propounded to Robert A. Crawford (a material witness for the claimant, Wesley Williams, in the above-entitled cause), which, with the answers thereto, when taken, will be read in evidence on the trial of said cause, in behalf of said claimant, Wesley Williams.

Interrogatory First. Are you acquainted with the parties to the above-entitled cause?

Interrogatory Second. Do you, or do you not, know anything of the execution of a certain written instrument, or deed of trust, by the said Edward F. Mahone to the said Wesley Williams? If so, state whether or not the exhibit hereto attached be the same one; and, if so, make it a part of your answer hereto, by some distinct mark or reference. State each and every fact you know, in relation to the said deed of trust. Was, or was not, said instrument executed on the day it bears date? Were you a subscribing witness to the said deed of trust? Did, or did not, the said Edward F. Mahone subscribe his name to the said instrument in your presence? Did he, or did he not, acknowledge the signature thereto to be his signature? Who else, besides yourself, was a subscribing witness to said deed of trust? and is the other subscribing witness dead or alive?

Interrogatory Third. State all you know about the execution, and delivery, and consideration of the said deed of trust, or written instrument, hereto attached, and marked Exhibit A, fully and particularly. State what was the consideration for the execution of the said deed of trust by the said Edward F. Mahone to the said Wesley Williams. State all you know on that subject fully.

Interrogatory Fourth. State every other fact and circumstance which you know in relation to the said instrument in writing, or deed of trust, which will benefit the claimant, Wesley Williams.

BELSER, RICE, & BARRETT,
Attorneys for Wesley Williams.

As attorneys for plaintiff, we hereby consent and agree that the evidence of the above-mentioned witness, Robert A. Crawford, may be taken upon interrogatories, according to and in conformity with the laws of the State of Alabama, in regard to the taking of the testimony of witnesses by interrogatories and depositions, and also waive affidavit, notice, and consent, that a commission may issue instanter, this the 17th day of November, 1853, reserving all other legal objections for irrelevancy of the testimony, or other cause.

HILLIARD & THORINGTON,
Attorneys for Plaintiff.

Cross-Interrogatories to Robert A. Crawford.

Cross-interrogatory First. Have you answered the direct interrogatories of your own knowledge, or from information derived from others?

Cross-interrogatory Second. Was the dwelling-house of Mahone situated on the twelve acres of land described in said Exhibit? and what was the value of said land and premises? Please describe the personal appearance of the slaves Martha and Adeline, described in said Exhibit, particularly, and state their respective qualities and value. Have not said land and premises and slaves been sold by said Williams, and the said indebtedness in said Exhibit satisfied thereby, or satisfied in some other way? Was not the said indebtedness satisfied by a large sale, which Williams had at Auburn, some year ago, or so, of Mahone's property? Have you ever heard Williams admit that it had been paid or satisfied in any way?

Cross-interrogatory Third. Do you know what was the consideration of the said indebtedness of your own knowledge? Did you see the money paid Mahone by said Williams? Do you know, of your own knowledge, that there was any consideration whatever for said debt? You will please answer of your own knowledge, and not from hearsay. If you know anything of the said sale which took place at Auburn, please state the amount of said sale? How large an amount did you ever hear Mr. Williams admit the same to be? Was it not some ten or twelve thousand dollars?

Cross-interrogatory Fourth. Was there any usury connected with said indebtedness, directly or indirectly? if yea, please state how and in what manner, and the extent or amount of said usury.

Cross-interrogatory Fifth. Where are said slaves at this time, and who is the owner thereof? Who was the bona fide purchaser and owner of the slaves belonging to said Mahone, and sold by said Williams at said sale at Auburn? Were said slaves, or nearly all of them, in the possession of said Williams immediately, or shortly after said sale? and where are they now, and who is the owner? Who is the owner of said twelve acres of land at this time? and if you state who is, please answer how they became so, and when.

Cross-interrogatory Sixth. Please state any facts or circumstances

and any admissions, by Williams, going to show that said indebtedness has been settled or satisfied? If said twelve acres of land, and said Martha and Adeline have been sold, please state when and where, by whom, for what purpose, or under what authority; the price each sold for, and who was the purchaser and owner.

Cross-interrogatory Seventh. Have you ever heard Mr. Williams admit that he had to pay the plaintiffs any money on account of said Mahone? If yea, state how much.

HILLIARD & THORINGTON,
Attorneys for Plaintiffs.

Commission.

United States of America. District Court of the United States for the Middle District of Alabama, at Montgomery.

To George Reese and A. B. Croft: Know ye, that we, having full faith in your prudence and competency, have appointed you commissioners, and by these presents do authorize you, or any one or more of you, at such time and place as you may appoint, to call before you and examine Robert A. Crawford, as witness in a case now pending in the District Court of the United States for the Middle District of the State of Alabama, wherein Hill, McLean & Co. are plaintiffs, and Edward F. Mahone is defendant in execution, and Wesley Williams is claimant, on oath, to be by you administered, upon interrogatories and cross-interrogatories annexed to this commission, to take and certify the deposition of the witness, Robert A. Crawford, and return the same to our said District Court, to be held on the Fourth Monday of November next, under your hands and seals.

[SEAL.] Witness Honorable John Gayle, Judge of said Court, this the 4th Monday of May, A. D. 1853.
Issued this the 19th day of November, A. D. 1853.

P. H. S. GAYLE,
Clerk.

Answer of Crawford.

In answer to the first direct interrogatory, the witness answers, and says: He is acquainted with the parties, Wesley Williams and Edward F. Mahone.

In answer to the second direct interrogatory, the witness answers, and says: I witnessed the execution of a certain written instrument, or deed of trust, from the said Edward F. Mahone to the said Wesley Williams. I find the same written instrument, or deed of trust, appended to the interrogatories which I am now answering, and marked on the top margin "Exhibit A." The said deed of trust was executed in the office of Crawford and Turner, at Auburn, Alabama, by Edward B. Mahone to Wesley Williams, both parties being then and there present; the said instrument of writing, or deed of trust, was then and there attested by myself and H. S. McGregor, sub-

scribing witnesses to the same. I understood from the parties, that said written instrument, or deed of trust, from the said Edward F. Mahone to the said Wesley Williams, was for and in consideration of a certain sum of money then and there paid by said Williams to said Mahone. My recollection does not now serve me sufficiently to attest the correctness of the date of said instrument or deed of trust; it was in the spring of 1851, and, I believe, in the month of April. The other subscribing witness, H. L. McGregor, has since departed this life.

To the third direct interrogatory, the witness answers, and says, that this interrogatory he has already answered as far as he is able in his answers to the second direct interrogatory; except as to the amount of consideration in money from the said Williams to the said Mahone, which he, deponent, did not count, but understood it to be about twelve hundred dollars.

In answer to the fourth direct interrogatory, the witness answers, and says, that some time in February, or March, of 1852, he fell in company with the said Edward F. Mahone, at Lagrange, Troup County, Georgia; said Mahone stated to witness, that his business was to borrow money to pay Wesley Williams, and requested him, deponent, to give him, Mahone, an introduction to some of the moneyed men of that place. Witness accordingly introduced him to Mr. John Douglas.

In the conversation with witness, Mahone stated that he would pledge negro property as collateral security, by the consent of said Williams, who, as stated by said Mahone, had agreed to suffer him, the said Mahone, so to pledge property on which he, the said Williams, held a deed of trust.

Cross-interrogatories.

In answer to the first cross-interrogatory, deponent saith, that he has answered the direct interrogatories, from his own knowledge in part, and in part from information derived from the parties E. F. Mahone and Wesley Williams, at the time of a moneyed negotiation between them, involving a certain instrument in writing or deed of trust; for instance, the witness did not read the written instrument or deed of trust, neither did he count the money; in these particulars his information was derived from the parties then and there present.

In answer to the second cross-interrogatory, deponent sayeth, he does not know the size, nor on what lots the dwelling-house of Mahone was situated, nor does he know their value; never having seen the slaves (to his knowledge), he can neither state their qualities nor value; does not know whether any or all of said property has been sold or not, nor what satisfaction may have been made. I do not know of any satisfaction having been; I have never heard Williams admit that he had been paid or satisfied in any way.

In answer to the third cross-interrogatory, deponent sayeth, that the consideration was money loaned by Williams to Mahone, and saw the money paid; the consideration a written instrument or deed of trust here appended, and marked Exhibit A. I know of no sale nor admissions by Williams.

In answer to the fourth cross-interrogatory, deponent sayeth, he knows nothing.

In answer to the fifth cross-interrogatory, deponent sayeth, he does not know where said slaves are, nor their owner, nor who was the bona fide purchaser, or owner of said slaves, nor who sold them. Does not know whether said slaves were ever in Williams's possession or not; does not know where they are now, nor who their owner; neither does he know the owner of said land.

In answer to the sixth cross-interrogatory, deponent sayeth, he knows of no facts, nor of any admissions by Williams, going to show that said indebtedness has been settled or satisfied; knows nothing of the sale of the said twelve acres of land, nor of the negroes being sold.

In answer to the seventh cross-interrogatory, deponent sayeth, he has never heard Williams say, that he had to pay plaintiffs any money on account of Mahone.

ROBERT A. CRAWFORD.

HILL, McLEAN & Co.
v.
EDWARD F. MAHONE, Defendant in Ex.
and WESLEY WILLIAMS, Claimant.

Now pending in the United States District Court, at Montgomery, in the State of Alabama.

By virtue of a commission to us directed by the Honorable the District of the United States for the Middle District of the State of Alabama, we have caused the witness, Robert A. Crawford, in the above-stated case, to come before us, and, being duly sworn, true answers to make to certain interrogatories to said Commission annexed, deposes and answers, as fully appears in pages one, two, three, and four hereof.

GEO. REESE, [SEAL.]
A. B. CROFT. [SEAL.]

STATE OF GEORGIA, WEST POINT, TROUP CO.,
November 29, A. D. 1853.

Mortgage, or Deed of Trust.

The State of Alabama, Macon County:

This Indenture, made and entered into this the ninth day of January, A. D. one thousand eight hundred and fifty-one, between Edward F. Mahone, of the first part, Wesley Williams, of the second part, and Henry L. McGregor, of the third part, witnesseth: That,

whereas the said Edward F. Mahone, by promissory note bearing even date with this indenture, due the first day of January next, is indebted to the said Wesley Williams in the sum of six thousand two hundred and eighty-one 25-100 dollars, and being willing and desirous to secure the said Wesley Williams the payment of said promissory note, at the maturity thereof, in consideration thereof, and of the sum of ten dollars, to him in hand paid at and before the sealing and delivery hereof, the receipt of which is hereby acknowledged, have granted, bargained, sold, and conveyed, and doth by these presents, grant, bargain, sell, and convey unto the said Henry L. McGregor, in special trust, the following described real and personal property, viz.: the house and lot containing ten acres of ground, whereon the said Edward F. Mahone now resides in the Town of Auburn; also the following negro-slaves, viz.: Eliza, a woman, about thirty years old; Philip, a boy, about sixteen years old; Ben, a boy, about twelve years old; Mary, a girl, about eight years old; Frances, a girl, about four years old; Rebecca, a girl, about two years old; Amy, a woman, about thirty years old; George, a boy, about eighteen years old; Julia, a girl, about eight years old; Eldridge, a boy, about five years old; Adaline, a girl, about thirteen years old; Jordan, a boy, about nine years old; Louisa, a girl, about sixteen years old; Charles, a boy, about seven years old; Alfred Martin, about twenty-seven years, and Chaney, twenty-six years: to have and to hold the above granted and bargained property to him, the said Henry L. McGregor, his heirs, &c., in trust, as aforesaid, to his and their use and behoof forever; nevertheless, if the said Edward F. Mahone shall pay off and discharge the said promissory note at its maturity, then this indenture to be null and void; but should the said Edward F. Mahone fail to pay, or discharge, said promissory note at its maturity, then the said Henry L. McGregor, as trustee, as aforesaid, is hereby fully authorized and empowered to seize and take into his possession the aforegranted property, and, after giving ten days' notice in three public places in said county, to expose said property to sale in the Town of Auburn, at public auction, to the highest bidder for cash; and, after satisfying said promissory note, and the expenses necessary to the execution and conveying of this indenture, to return the balance to the said Edward F. Mahone; and the said trustee, as aforesaid, is hereby authorized to make all necessary conveyances of said property in case the same shall be sold under this indenture; and, in case of the death, refusal, or inability to act as trustee under this indenture, the said Wesley Williams is hereby fully authorized and empowered to act as said trustee, instead of the said Henry L. McGregor. In testimony whereof, I have hereunto set my hand and seal, the day and year above written.

EDWARD F. MAHONE. [SEAL.]

Signed, sealed and delivered in presence of
BENJAMIN HERRING,
LEVI LEE.

The State of Alabama, Macon County.

Before me, William B. Onsley, an acting Justice of the Peace, in and for said County, personally appeared the above-named Benjamin Herring, one of the subscribing witnesses to the foregoing deed, who being first duly sworn, deposeth and saith, that he saw the above-named Edward F. Mahone, whose name is subscribed thereto, sign, seal and deliver the same to the said Henry L. McGregor; that he, this deponent, subscribed his name as a witness in the presence of the said Edward F. Mahone, and that he saw the other subscribing witness sign the same in the presence of the said Edward F. Mahone, and in the presence of each other, on the day and year therein named.

Given under my hand and seal, this 24th day of January, A. D., 1851.

BENJAMIN HERRING.

WILLIAM B. ONSLEY, J. P.

Received in office for record, 29th January, 1851.

LOUIS ALEXANDER,
Judge, P. C.

The State of Alabama, Macon County.

I do hereby certify that the within Deed has been recorded in Book G, page 677.

Given under my hand.

LOUIS ALEXANDER,
Judge, P. C.

Alabama, Barbour County.

I certify that this Deed was received in office 15th August, 1851, and recorded the same day in Book G, pages 350 and 351.

W. R. COWIN,
Judge, P. C.

Mortgage, or Deed of Trust.

The State of Alabama, Macon County.

This indenture, made and entered into this the fifth day of April, A. D. One Thousand Eight Hundred and Fifty-One, between Edward F. Mahone of the one part and Wesley Williams of the other part: Witnesseth, that, whereas the said Edward F. Mahone is indebted to the said Wesley Williams in the sum of twelve hundred dollars, due the first day of January next, by promissory note, bearing even date with this instrument, and whereas the said Edward F. Mahone is willing and desirous to save the said Wesley Williams in the payment of the same, and to secure the payment of the said sum of money to the said Wesley Williams at the maturity thereof, in consideration

thereof, and of the sum of ten dollars to me in hand paid at and before the sealing and delivery hereof, the receipt of which is hereby acknowledged, have granted, bargained, sold and conveyed, and by these presents doth grant, bargain, sell and convey unto the said Wesley Williams, his heirs and assigns, the following property, to wit: Twelve acres of land, being lots No. twenty-three and twenty-four in the northeast square of the Town of Auburn; also, a negro woman named Martha, about twenty years old, and a negro girl named Adaline, about sixteen years old, to have and to hold the above granted and bargained property and premises to him the said Wesley Williams, his heirs and assigns, to his and their use and behoof forever. Nevertheless, should the said Edward F. Mahone, at the maturity of the said promissory note, pay off and discharge the same to the said Wesley Williams or his assigns, then this indenture to be null and void. But, should the said Edward F. Mahone fail or refuse to pay off and discharge the said promissory note at its maturity, then the said Wesley Williams, his heirs or assigns, is hereby fully authorized and empowered to seize and take possession of said lots, and said negro slaves above described, and after giving ten days' notice of the same, to expose the same at public outcry in the Town of Auburn, to the highest bidder for cash; and after paying off the said promissary note and all expenses accruing in the carrying into effect this instrument, this indenture to return, and pay over to the said Edward F. Mahone the surplus arising from the sale of said property. In testimony whereof, I have hereunto set my hand and seal the day and year above written.

(Signed) EDWARD F. MAHONE. [SEAL.]

Signed, sealed and delivered in presence of
ROBERT A. CRAWFORD,
H. L. McGREGOR.

The State of Alabama, Macon County.

Personally appeared before me, William B. Onsley, an acting Justice of the Peace in and for said County, the above-named Henry L. McGregor, one of the subscribing witnesses to the foregoing Deed, who being first duly sworn, deposeth and saith that he saw the above-named Edward F. Mahone, whose name is subscribed thereto, sign, seal and deliver the same to the said Wesley Williams; that he, this deponent, subscribed his name as a witness thereto, in the presence of the said Edward F. Mahone, and that he saw the other subscribing witness sign the same, in the presence of the said Edward F. Mahone, and in the presence of each other, on the day and year therein named. Given under my hand and seal, this the 30th day of April, A. D. 1851.

W. B. ONSLEY, [SEAL.]
J. P.

Received in office for record, 2d May, 1851.

LOUIS ALEXANDER,
J. P. C.

The State of Alabama, Macon County.

I hereby certify that the within Deed was received in office for record, and was recorded on Book H, at page — this 2d May, 1851.

LOUIS ALEXANDER,
J. P. C.

The State of Alabama, Barbour County.

I hereby certify that this deed was received in office, August 15th, 1851, and recorded on the same day in Book J, page 348 and 349.

W. R. COWIN,
Judge of Probate.

Bill of Exceptions, continued.

True copies of the said two mortgages are set forth in said depositions, and the original of one of said two mortgages was attached to the Interrogatories to said Herrin, and was proved by him, and the original of the other of said two mortgages was attached to the Interrogatories to said Crawford, and was proved by him. Both of said original mortgages were read in evidence, and true copies of them, as read in evidence, are herein set forth, attached to said Interrogatories to Herrin and Crawford respectively, and forming part of their said depositions. It was proved that said Mahone and Williams, for more than six years past, have resided in said town of Auburn, in Macon County, Alabama, and both of said mortgages were duly recorded in proper time, and in the proper office in said County of Macon. The said Williams proved the execution, by said Mahone to him, of each of the promissory notes, described in and secured by said two mortgages, and read in evidence said promissory notes, as follows:

Notes.

$6281 25. On or before the first day of January next, I promise to pay Wesley Williams or bearer, six thousand two hundred and eighty-one dollars, twenty-five cents, value received, January 9th, 1851.

EDWARD F. MAHONE.

Notes.

$1200 00. On or before the first day of January next, I promise to pay Wesley Williams or order, twelve hundred dollars, value received, April 5th, 1851.

EDWARD F. MAHONE.

The said Williams then produced and proved the execution, by said Mahone to him, of eleven other promissory notes and two due bills, all of which are payable to said Williams, and read all of them in evidence. The respective dates, amounts, and description of said eleven other promissory notes and two due bills, so read in evidence, are substantially as follows, to wit:

One note, dated 14th May, 1851, due 1st January, 1852, for $935 00.
One " " 5th Sept. 1851, due 1st January, 1852, for $450 00.
Eight notes for $45 00 each, dated 9th March, 1852, due ten days after date, $360 00.
One note for $15 00, dated 9th March, 1852, due ten days after date, $15 00.
One due bill, $35 00, dated 9th March, 1852, $35 00.
One due bill, $30 00, dated 9th March, 1852, $30 00.

At the interview aforesaid, between the said Williams and the attorney of the plaintiffs, there was no proof that the said Williams alluded to or mentioned these notes and due bills, or any other indebtedness to him by Mahone, the defendant in the judgment.

The defendant, Williams, then offered in evidence to the jury the so much of the following deposition of one Dillard, which had been duly and properly taken, as went to prove the declaration of Mahone as to his indebtedness to Williams, the defendant.

F. W. Dillard's Deposition.

HILL, McLEAN & Co. *v.* WESLEY WILLIAMS, Claimant. } The Depositions of F. W. Dillard, by consent of counsel.

THE SAME *v.* THE SAME, Garnishee.

Witness says, that E. F. Mahone was indebted to him by note and otherwise, and that after the sale of his property, the 12th of Feb. 1853, under a mortgage to Wesley Williams, and on Monday morning following the sale, witness had a conversation with E. F. Mahone in regard to the payment of his indebted to witness. The object of this conversation was to get Mahone to pay witness what he owed him through Williams, as witness supposed that the property had brought more than the deed of trust claimed. Mahone said that he could not settle that way, as he had previously authorized the said Wesley Williams to appropriate the excess, if any, after the satisfaction of the mortgage, to other claims which he had against him, Mahone. Witness, in a short time thereafter, proposed to let said Williams have the claims which he, witness, held against Mahone, and proposed to Williams, that in the event he would not buy them, to take and save them for witness. Williams told witness, that he had appropriated the excess to the payment of debts due him from Mahone, and consequently, could do nothing with the paper that witness held.

Witness bought cotton the winter of 1850 and 1851, in the town of Auburn, Macon County, also, and paid for crop lots in money 12½ cents cash, and one lot of 100 bales, 13 cents cash. Knew of the sale of one crop at 15 cents, on a credit of 12 months, from L. T. Wimberly to J. A. & W. H. Knight. In the month of January, 1851, Mahone told witness, that he had bought a lot of cotton from Wesley Williams, and proposed to witness to borrow of him money upon the faith of the cotton; he said it was a good lot of cotton and would bring, before the 1st of April, 15 cents cash. Witness refused to have any transaction with Mahone. Witness has heard Mahone say frequently, that he had frequent transactions with Williams.

F. W. DILLARD.

On the trial of above causes we agree, that the above may be regarded as sworn to by said witness in open court, reserving all objections to its competency, legality, relevancy, hearsay, &c., the sole object of this consent being merely to admit, that the said witness would swear as above, if examined on the stand.

Fall Term, 1854.

HILLIARD & THORINGTON,
For Plaintiffs.

To the introduction of this deposition, the plaintiffs' counsel objected, and the Court sustained the objection and rejected it as proper evidence to the jury, on the ground that Mahone himself was a competent witness. The foregoing was in substance all the evidence produced or offered on the trial, whereupon, and after full argument by counsel, the Court charged the jury as follows: that the plaintiffs insisted on their right to recover on the ground that their judgment was a lien upon the house and lot mentioned in one of the mortgages, and that they had the right to pursue therewith the proceeds of the sale of the said house and lot, and also on the ground, that the said eleven promissory notes and two due bills, which had been read in evidence, had been fraudulently obtained, and were executed to Williams to defraud the creditors of Mahone, and without consideration. Upon the first point the Court charged, that the judgment created no lien upon the said house and lot, or the proceeds thereof, because when the said judgment was obtained the law day had passed, or in other words, the debts specified in the mortgages had become due, and could not, therefore, be levied on to satisfy said judgment.

On the second point, the Court charged the jury, that the question of fraud was exclusively a matter of consideration for them; that if from the evidence they believed that the notes not included in the mortgages had been executed by fraud or collusion between Williams and Mahone, they should find for the plaintiffs the amount of the proceeds of the sale of the house and lot, after deducting therefrom the balance remaining due to Williams on the mortgages,

with interest thereon from the day when the garnishment was issued; otherwise they should find for the defendant.

The counsel for Williams then requested the Court to charge the jury, that if, upon the evidence, the said Mahone could not recover from the said Williams in an action of debt or assumpsit, then the jury ought not to find for the plaintiff. This charge the Court refused to give, and charged the jury, that if there was fraud between Mahone and Williams in executing the notes not included in the mortgages, Mahone could have no right to recover in any action against Williams, being himself a party to the fraud, nor could he object to Williams retaining in his hands the money produced by the sale of the house and lot to the full amount of the said notes and due bills; but if such fraud existed between Williams and Mahone, the plaintiffs had a right to recover.

To all which charges and refusals to charge as herein contained, and to the exclusion of evidence as herein stated, the defendant's counsel excepts as being contrary to law, and asks the Court to sign and seal this their bill of exceptions on the trial and in term time, which is accordingly done.

JOHN GAYLE, [SEAL.]
Judge.

Writ of Error.

United States of America, ss.

The President of the United States:

To the Honorable the Judges of the District Court of the United States for the Middle District of the State of Alabama, at Montgomery in said State, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court, before you, the Honorable John Gayle, between Hill, McLean & Co., plaintiffs in garnishment, and Wesley Williams, garnishee of Edward F. Mahone, defendant in garnishment, and in which said suit the said Hill, McLean & Co., plaintiffs in garnishment, recovered a verdict and judgment against the said Wesley Williams, defendant in garnishment, for the sum of twenty-two hundred and twenty-four dollars and fifty-one cents, besides costs of said suit, and which said suit was tried, and said verdict and judgment obtained at the Fall Term, 1854, of the said District Court of the United States, a manifest error hath happened, to the great damage of the said Wesley Williams, plaintiff in error as aforesaid, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the

Supreme Court of the United States, together with this writ, so that you have the same at Washington at the next term of the Supreme Court of the United States, to wit: on the first Monday of December next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and custom of the United States, should be done.

Witness the Honorable Roger B. Taney, Chief Justice of the said Supreme Court, this 6th of December, in the year of our Lord one thousand eight hundred and fifty-four.

P. H. S. GAYLE,
Clerk of the District Court of the United States.

Allowed by JOHN GAYLE,
Judge.

Filed in office, Dec. 6th, 1854.

P. H. S. GAYLE,
Clerk.

Writ of Error Bond.

Know all men by these presents, that we, Wesley Williams, Nathaniel I. Scott, and John W. W. Drake, are held and firmly bound unto Hill, McLean & Co., in the full and just sum of four thousand four hundred and forty-nine dollars and ten cents, to be paid to the said Hill, McLean & Co., their certain attorney, executors, administrators or assigns, to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents. Sealed with our seals, and dated this 6th day of December, in the year of our Lord one thousand eight hundred and fifty-four. Whereas, lately at a District Court of the United States, Middle District of the State of Alabama, the Honorable John Gayle presiding, in a suit depending in said Court, wherein Hill, McLean & Co., plaintiffs in garnishment, and the said Wesley Williams, defendant in garnishment, a verdict and judgment in said cause was rendered against said Wesley Williams, defendant in garnishment, for the sum of twenty-two hundred and twenty-four dollars and fifty-one cents, besides costs of suit, and the said Wesley Williams, defendant in garnishment as aforesaid, having obtained a writ of error, and filed a copy thereof in the Clerk's Office of the said Court to reverse the judgment in the aforesaid suit, and a citation directed to the said Hill, McLean & Co., plaintiffs in garnishment as aforesaid, citing and admonishing them to be and appear at the next term of the Supreme Court of the United States, to wit: at a Supreme Court of the United States, to be holden at Washington the first Monday of December next.

Now the condition of the above obligation is such, that if the said Wesley Williams, defendant in garnishment as aforesaid, shall prosecute his said writ of error to effect, and answer all damages and costs, if

he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

WESLEY WILLIAMS, [SEAL.]
N. J. SCOTT, [SEAL.]
J. W. W. DRAKE. [SEAL.]

Approved by
J. GAYLE,
Judge.

Filed December 6th, 1854.

P. H. S. GAYLE,
Clerk.

Citation in Error.

The United States of America.

To Harry R. W. Hill, James D. McLean, William Knox, and Robert W. Estlin, partners under the name and style of Hill, McLean & Co., plaintiffs in garnishment in the case of the said Hill, McLean & Co., plaintiffs in garnishment, *v.* Wesley Williams, garnishee of Edward F. Mahone, defendant in garnishment, in the District Court of the United States, Middle District of the State of Alabama, Fall Term, 1854; or Hilliard & Thorington, their attorneys of record, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error, filed in the Clerk's Office of the District Court of the United States, for the Middle District of the State of Alabama, held at Montgomery, in a cause at the term above stated, wherein Wesley Williams, defendant in garnishment, is plaintiff in error, and Hill, McLean & Co., plaintiffs in garnishment, are defendants in error, and which said cause has been taken to the said Supreme Court of the United States, at the term of the same above stated, by the said Wesley Williams, defendant as aforesaid, by writ of error, to show cause, if any there be, why a judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable John Gayle, Judge of the Middle District of the State of Alabama, at Montgomery, this 6th day of December, in the year of our Lord one thousand eight hundred and fifty-four.

JOHN GAYLE,
Judge.

The State of Alabama: Montgomery County.

On this day of December, in the year of our Lord one thousand eight hundred and fifty-four, personally appeared William H. Cun-